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THE ECONOMIC REALITIES OF WOMEN UNDER THE MANITOBA FAMILY MAINTENANCE ACT

A report to the Government of Manitoba

Submitted by

The Manitoba Advisory Council on the Status of Women

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ERRATA

1. p.5, paragraph 4, line 4 should read (See Bill #C-48);

2. Table Key, p.27

   "Number of children" refers to the children of the union prior to separation.

   "Custody to Mother" refers to the number of dependent children residing with the mother;

3. p.29, Case #3, Custody to Father should read 1.

FOREWORD

Nellie McClung in "In Times Like These" noted that:

> If prejudices belonged to the vegetable world they would be described under the general heading of: "Hardy Perennials: will grow in any soil and bloom without ceasing; require no cultivation; will do better when left alone."

Family Law is an area where women seem to have been pruning, clipping and weeding for a number of years. There is no question that we have progressed from the stage at the beginning of the century when, in English-Canada, common law determined that a married woman could not dispose of her own property, nor could she make any claim on her husband's property if she should be abandoned and he should die intestate.

Our laws now reflect, in principle, the contributions women make to material assets, but we share with many a concern that, in practice, women continue to bear disproportionate economic penalties upon breakdown of marriage and subsequent court adjudication.

This report emphasizes the progressive nature of Manitoba's Family Law legislation but indicates that there are still key areas to which attention must be given. Many women have worked long hours to ensure that women are adequately protected under Family Law Legislation. The work which was originally done on the Family Maintenance Act was undertaken by a particularly committed group of women and we would like to acknowledge, not only their work, but their inspiration to us to continue in their footsteps. To Alice Steinbart, Berenice Sisler, Beverly Goodwin, Jean Carson, Georgia Cordes, and Ruth Browne a special thanks for the constancy of their attention. Mona Brown, Judy Holden, Elizabeth MacEwan, Carolyn Garlick and Maureen Bracken

should also be acknowledged for their support and input. We also thank Jane McCannell-Neale and Elaine Clarke for their assistance, and Jennifer Cooper (Council Member) and Joan Eliesen (Executive Director) who directed this report to its completion. On behalf of Council, it is my pleasure to present this document to the Minister Responsible for the Status of Women.

Sincerely,

Roberta Ellis-Grunfeld

Roberta Ellis-Grunfeld
Chairperson

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A. INTRODUCTION

In September of 1981 a brief was submitted to the then Attorney-General of the Province of Manitoba, Gerald Mercier. Entitled Monitoring the Family Maintenance Act: Analysis and Recommendations, it was prepared by the Ad Hoc Family Law Monitoring Group[1] (see Appendix "A"). They reviewed 23 documented maintenance awards granted in the previous three years and found a "continuation of a lower economic status for women and children in their care, than for husbands and fathers" after separation and divorce. The Manitoba Advisory Council on the Status of Women, ("Advisory Council"), as part of its work with community groups, has been facilitating the continuance of the work of this Ad Hoc group.[2] In 1983-84, two students from the Faculty of Social Work at the University of Manitoba, whose field placement was with Advisory Council, conducted further research and continued to monitor cases being reported under the new family law legislation. Their preliminary findings wholly supported those of the Ad Hoc Family Law Monitoring Group, and the Advisory Council commissioned this report to present its findings to the Manitoba Government.

This report, in part funded through a STEP program[3], examines four major areas of concern in family law affecting Manitoba women:

(1) The law requires that a spouse take reasonable steps to become "financially independent" but this phrase is not defined. Further, the law provides that "impairment of income earning capacity" will be considered in determining maintenance awards. Again, this concept is not defined. As a result, it has been held that a woman who has worked in the home during the marriage is

"financially independent" when she is only able to earn a very low salary. Hence, she gets no maintenance, even though it seems apparent that her "income earning capacity" was impaired by the marriage.

(2) Women have a right to share equally in the marital assets. However, the law then requires the judge to take this property into account when determining whether to award maintenance. As a result, women may receive little or no maintenance. Their husbands, meanwhile, have their full half of the property plus a good salary, thanks in no small measure to the contribution of these women during the marriage.

(3) When maintenance has been awarded, women almost always have less money available to live on than their husbands, even when they have one or more children in their custody. These low maintenance awards mean that women and the children in their custody have a substantially lower standard of living after separation than their estranged husbands.

(4) Often, a husband who is required to pay maintenance gets remarried and takes on a second wife and perhaps children to support. He then argues that his maintenance obligations to the first wife and/or children should be reduced. Some judges accept this line of reasoning with the result that the first family is left in need.

In the compilation of this report all reported family law decisions of the Court of Queen's Bench and the Manitoba Court of Appeal from November, 1983, to June, 1984, were examined. Several cases have been selected to illustrate

our areas of concern and to provide a basis for our recommendations. Our intention is to show that under our present laws these judgments are possible and do occur. Further, it is our contention that under current legislation, and given prevailing societal attitudes, these inequities will continue to occur in many Manitoba decisions.

Manitoba is considered by many to have the most progressive family laws in Canada and there has been continuing positive legislation to improve them (for example, expanded powers to prevent dissipation, enhanced maintenance enforcement procedures and mandatory pension splitting). Nevertheless, the above concerns remain and must be addressed.

B. BACKGROUND

Canada in the 1980's is in the midst of societal changes which affect both family composition and traditional family roles.

Four out of every ten Canadian marriages will end in divorce. Every year, there are more divorce actions in Canadian courts than both major criminal cases and any other type of substantial civil lawsuit. Very often, children are involved in the separating and new blended families:

> Never before have we lived in a society in which a very substantial portion of children live in households with one parent (and potentially that parent's new spouse) while the other parent lives in a different household. This is truly a new phenomenon, as yet uncharted in its social implications.[4]

It has been estimated by the U.S. Department of Commerce that in the United States approximately 45% of children born in the mid-70's, before they reach the age of 18, will have lived in a one-parent family.[5] We have no reason to think it will be any different in Canada.

Most often these children reside with the mother after separation. The proportion of divorcing fathers who received custody did not increase noticeably between 1971 and 1980. Only 16% received custody in 1980 compared to 78.2% of mothers.

Living with mother often means living in poverty. 69.1% of all children living in one-parent families in 1975 were poor. The average income in female-headed households deteriorated from 64% of the overall average household

income in 1967 to only 52% in 1975. In 1982, 47% of single-parent families headed by women were living below the poverty line.[6]

"The biggest single and continuing problem of the sole-support mother is a basic financial insecurity and a subsistence level of living which she very often has no real hope of improving."[7A]

This financial insecurity is created by three major factors: the inadequacy of maintenance awards, the problem in enforcing even those amounts which are ordered to be paid, and the difficulty women have in making a meaningful financial contribution through their own paid labour.

Maintenance awards are inadequate because they usually result in the woman-headed family unit existing at a much lower standard of living than that headed by the man. This appears to be true regardless of whether the woman works in the home or in the paid labour force or whether she is undertaking re-training. One study, conducted one year after divorce, showed that men experienced a 42% improvement by their standard of living after divorce while women experienced a 73% loss.[7B]

The difficulty of enforcing orders, especially when the payor leaves the province, has been the subject of much public discussion and, finally, some attention by the Federal Government (See Bill C-160).

However, it is the area of the difficulty experienced by women in generating income which is the most under-appreciated. The law states flatly that women have a responsibility to become financially independent.

Having devoted herself entirely to the care of the husband, home and children, a full-time homemaker is now expected to become financially independent at separation. She is ill-prepared for the labour market as her education did not consider long term career goals, she has little or no labour force experience, and she is often competing with more youthful workers.

Even for those women who are already working in the paid labour force, and today many wives earn an income independent from their husbands, they are usually earning much less income than their husbands. "There is no other factor explaining more income disparity today than sex - everything else pales beside it in significance...within each... variable grouping women are at the bottom economically."[8] Statistics Canada showed that "the average income of women in 1980 was $8,414.00 per year, and for men it was $16,918.00 per year."[9]

This disparity based on sex is due to a number of factors:

- women in the paid labour force do not receive equal pay for work of value equal to that done by men;
- a wife's job is often not taken to be as important as the husband's and family decisions are made with a view to freeing up the husband to pursue his career and enhance his earning ability to the detriment of the wife's career;
- those women who enter the paid labour force are likely to continue doing the major share of child care and housework and are therefore actually undertaking second jobs. Further, child care is often expensive, inferior or simply unavailable. As a result, women either

cannot work at all or they work part-time or they suffer career interruptions; and

- the work available to women in the wage sector is likely to be low-paid, insecure, and without basic benefits or opportunities for advancement.[10]

Can a woman who has taken on marital responsibilities that have impaired her income earning potential be considered "financially independent" when she is earning significantly less than her husband?

Unfortunately, although spouses are recognized as "enjoying equal rights" during marriage (see Preamble, The Marital Property Act, S.M. 1978, c.24), it appears to be quite different at separation. As previously indicated, the wife usually ends up with a much lower standard of living than the husband. Certainly in light of the Canadian Charter of Rights and Freedoms such unequal treatment cannot go unheeded.

C. AREAS OF CONCERN

1. Definition of "Financially Independent"

Increasingly, legislatures and courts are inclined to perceive the character of spousal maintenance as "rehabilitative". The Manitoba Family Maintenance Act (the "Act") provides that where one spouse is financially dependent upon the other, the court must consider the extent to which the dependent spouse is taking reasonable steps to become financially independent in determining a reasonable amount of maintenance.[11]

Social realities make achieving that independence very difficult for most women. A great number of women are part-time workers. Achieving true financial independence is hampered by the lack of full-time job opportunities with meaningful compensation. Full-time homemakers may have great difficulty re-entering the paid labour market after an absence of many years, especially in view of Canada's staggering unemployment situation. Even full-time wage earners are often working in female job ghettos where the compensation would sustain only the most meager form of "financial independence".

If a woman is not to be penalized for her years of working for the family, we as a society must realize:

(a) the need for a generous time period during which a woman can adjust to her new status, investigate options and develop a plan;
(b) a woman's right to pursue a course of studies beyond preparation for unskilled, underpaid employment; and

(c) a woman's disadvantaged position upon entering the job market even upon completion of studies.

Whether a judge is likely to allow these kinds of considerations depends upon what it means to achieve "financial independence". If obtaining a minimum wage, insecure job with no benefits is sufficient, then the wife who may have qualified to go to Law School may be jeopardizing her maintenance by not taking instead an immediate job from the Help Wanted ads.

Unfortunately, the law does not define "financial independence". In Taggart v. Taggart[12], the wife had little training after a 27 year marriage and was only able to secure a clerical job paying $12,000.00 per year. Her husband had worked his way up in the fire department and was earning three times as much. Had she achieved financial independence? Justice Hamilton made no provision for maintenance.

"Financial independence" must be determined in reference to the standard of living enjoyed during the marriage. As it is likely there will be insufficient funds to maintain the standard of living enjoyed during the marriage, available resources should be allotted to provide for a comparable standard of living for both households. "Financial independence" should be deemed to exist only when this new standard of living can be achieved and maintained without assistance from the other spouse.

Such an approach must be used whenever a woman can demonstrate an impairment of her income earning potential because her career in the paid labour force was set at a priority below that of caring for her husband and children. Priorizing her homemaking duties might mean absenting

herself totally from the paid labour force for a period of time, or it might involve working part-time only. Some women might work full-time but without taking the time from home responsibilities to obtain the training or education necessary to obtain well-paying work. Their work and job advancement may be jeopardized when the family moves to a new community to advance the husband's career. If children's ages and needs change it is the woman who adapts her work schedule to meet the demands of a growing family. These work interruptions inhibit the chances for promotion or accumulation of seniority. These women have made an investment in their husbands' earning ability with the knowledge and consent of their husbands and indeed often at the husband's specific request or demand. They have a right to expect a return on that investment.

Recommendations:

(1) Family Maintenance laws must be explicit that where the income earning ability of one spouse has been impaired during the marriage, that spouse must be given time and maintenance in order to achieve "financial independence".

(2) A spouse should not be considered to have achieved "financial independence" until she can maintain a similar standard of living for her household to that of her separated spouse.

(3) "Income earning capacity" must be considered to have been "impaired" whenever a spouse has taken the primary responsibility for homemaking or parenting in addition to or instead of her work in the paid labour force.

2. Considering Assets from Equal Division in Maintenance Decisions

The Act states that the amount of property settlement made between spouses must be considered in determining whether and in what amount to make an order of spousal maintenance.[13]

This clause may be necessary in order to make equitable decisions where, for some reason specific to the situation, it has been impossible or undesirable to effect an equal sharing of property owned by the spouses at separation (eg. where there is significant inherited property excluded from an accounting). However, where equal sharing has taken place, it should never affect maintenance decisions. These are two separate issues. A woman's entitlement to share in the accumulated marital property should be a right separate and apart from her right to receive maintenance where she has suffered impairment in her income earning capacity. Unfortunately the reverse has been an interpretation of this section.

In Taggart v. Taggart,[14] (Justice Hamilton presiding) spouses in their early fifties equally shared property accumulated during their 27-year marriage. Mr. Justice Hamilton said that since the wife would be getting this property (equal to what her husband also had), there would be no order as to maintenance. Her income of $12,000.00 compared with the husband's of over $35,000.00 per year. The result is that the wife must erode her assets in order to supplement her low income while the husband is free to keep his share of the assets to invest, enjoy or squander, quite apart from his income requirements.

In Isbister v. Isbister,[15] (Justices Monnin and O'Sullivan and Chief Justice Freedman presiding), after 10 years of marriage and raising 2 children, the wife was only able to earn $12,000.00 per year while her husband earned over $27,000.00 per year. However, she did not receive any maintenance for herself. Mr. Justice Monnin stated that, "The learned trial judge, on the basis that the wife was gainfully employed and will receive some income from her capital assets, did not provide any maintenance. I agree.". As a result, the wife's income, even after child maintenance has been added, will be less than that of the husband living alone.

Mr. Justice Scollin, in Gutheil v. Gutheil,[16] reduced the amount of maintenance the wife had been receiving, and time limited it, after equally dividing property accumulated during a 23-year marriage. The apparent rationale for this reduction was that, "the disposition in the present proceedings will release additional cash to her.".[17] While the husband (who had one son living with him) would average $79,000.00 after-maintenance income per year, the wife was a full-time student and her only source of income was the $18,000.00 per year maintenance. Presumably the judge finds it acceptable for the wife to have to erode her share of the marital property in order to try and provide herself with a minimal standard of living. It is grossly inequitable that the husband is free to utilize his share as he wishes and still maintain a much higher standard of living.

Maintenance issues must be separated from property issues. The apparent judicial practice of asking only one spouse to erode their assets in order to maintain an adequate standard of living is inequitable.

Recommendation:

Assets accumulated during a marriage and divided equally upon separation should not be considered in maintenance decisions.

3. Inequity in After-Maintenance Income

> "The chief asset of any Canadian married couple is likely to be the earning capacity of the higher-paid spouse, who tends to be the husband. The only way this can be fairly divided is through adequate maintenance laws, which specifically direct judges to confront the realities of the Canadian situation that couples, and particularly women, face upon divorce."[18]

The Act provides that maintenance should be reasonable with reference to all the circumstances of the spouses.[19] However, there is a great deal of discretion left to the judge to consider "all the circumstances of the spouses" as approached from her/his own value base. Our research shows that this value base can contain a heavy weighting of gender bias. The separated wife almost always receives a lesser share of the total family income, regardless of whether she has children in her custody.

i) Results of Manitoba Data: 1983-1984

In the following example cases, heard in the Manitoba courts in 1983 and 1984, family income from all sources was totalled and the percentage available to each spouse after adjustment through maintenance awards was ascertained:

Leb v. Leb:[20] (Carr, J.)	82% for the husband and 18% for the wife and two children after 19 years of marriage
Isbister v. Isbister:[21] (Freedman, C.J.M.) (Monnin, J.) (O'Sullivan, J.)	54% for the husband and 46% for the wife and two children
Taggart v. Taggart:[22] (Hamilton, J.)	75% for the husband and 25% for the wife after 27 years of marriage
Murray v. Murray:[23] (Carr, J.)	69% for the husband and 31% for the wife and one child

Note how the husband receives substantially more in those rare cases where he has custody of one or more children:

Gutheil v. Gutheil:[24] (Scollin, J.)	81% for the husband and one child, 19% for the wife
Jensen v. Jensen:[25] (Bowman, J.)	65% for the husband and one child, and 35% for the wife and two children after 14 years of marriage
Friesen v. Friesen:[26] (Helper, J.)	81% for the husband and one child, 19% for the wife

Inevitably, there is a drop in standard of living to be expected when family income must support two households instead of one. However, in exercising the judicial discretion presently afforded them under the Act, judges

somehow do not think it "reasonable" to reduce the standard of living of each spouse equally. Women and children should be supported at a standard of living similar to that which the husband enjoys after separation.

ii) Difficulties in Data Collection

In compiling the data needed to make recommendations in this area, our researchers were greatly inhibited by the lack of accessible and complete documentation.

Many decisions are simply given verbally by the judge and no written transcript of what she/he decided is prepared. An interested party must rely upon the court files which are not easily accessible to the public and which do not always contain a complete or accurate record of the facts upon which the judge relied in making her/his decision.

Further, even when the judge renders a written decision, she/he may not carefully set out all the relevant facts. Again a researcher must try to rely upon the court files.

Finally, most written decisions are not published in the law reports but are simply on file at the Law Library and are not maintained in a fashion which would allow access by subject matter. A researcher must pick through a multitude of decisions to find those that are relevant.

Both the judiciary and the public would greatly benefit from an ongoing reporting and collection of this information.

Recommendations:

(1) The court, in determining what is "reasonable" by way of maintenance, must assume that both spouses are entitled to enjoy a similar standard of living after separation.

(2) The Attorney-General's Department should develop a system of reporting and collection of relevant data concerning maintenance decisions and (a) distribute same to the judiciary to assist them in their deliberations; and (b) make same available to the public.

4. Priority of First Over Second Families

The Act does not address remarriage or subsequent common-law relationships except to specify that the obligation to support a child to whom you have stood in "loco parentis" is secondary to the obligation of the natural parent.[27]

If children of a marriage are in the custody of their mother who enters a new living-together arrangement, their father is still responsible for their support. However, the judge may consider it reasonable for the father to reduce his support payments if the new male partner is sharing expenses or contributing some capital. In these circumstances the family's "needs" are considered to have been reduced.

If the same logic worked both ways, where a father's new female partner is sharing expenses, or contributing capital, his means could be considered to have risen and

maintenance would rise. This does not seem to be reflected in Manitoba decisions.

In Neffgen v. Neffgen[28] (Scollin, J.) the court did not consider the new wife's income as a secretary nor her capital contributions except insofar as their affairs could not be disentangled.

In Ball v. Ball[29] (Scollin, J.) the income of the father's new female partner was not referred to - neither potential nor realized - even though it is stated that she was a teacher when they met. However, the judge was diligent in his attempts to ascertain the income of the mother's new husband, which he considered relevant. Both women had had babies in the new relationships. The first wife was in the paid labour market "because she considered it necessary to assist in providing an acceptable standard of living for the children."[30] Given the first husband's prior commitment should his new partner not be expected to earn a salary also if they wish to enjoy a certain standard of living not attainable if living up to his previous commitment?

Where remarriage has taken place, Manitoba relies for its precedents from all across Canada under the Divorce Act. Under this Act it has been held that:

> In my opinion, it is in the public interest that the new family unit be given every opportunity to succeed and prosper.[31]
>
> I believe that the remarriage of either spouse (especially if one or several children are born from the second marriage) is a pertinent factor which must be taken into consideration in order to determine the amount of alimentary allowance to be given to the wife and children of a first marriage ...[32]

Contrast the above underlined value with the following:

> The applicant should not be permitted to shun the marital obligations arising out of the fist marriage by entering into another marriage, and the mere fact that he saw fit to do so gives him no ground in itself for seeking an order to reduce his liabilities to his first wife and child. He cannot expect his first wife and child to subsidize his second marriage.[33]

> The husband ... did nothing to prevent having a family. His obligation to his first wife and children was already in existence and he well knew what his obligations were ...[34]

Unfortunately, some writers have detected a "dramatic move" in the law towards permitting a man of modest means to support his second family even if that means casting the first family onto the public purse.[35]

An argument often used to justify impoverishing a first family so that the second one can prosper is:

> Otherwise, this would mean that the only persons capable of remarrying are those who can afford it, and that there would be two weights, two measures, which are: on one side the rich who could remarry because they can afford it, and on the other side the poor or economically weak who could not remarry because of obligations imposed by the judgment granting divorce...[36]

There are serious flaws in the above reasoning. Rather than being imposed by "a judgment granting divorce", a man establishes his own obligations to children of the marriage and to the first wife, if she suffered financial impairment during that marriage in the interests of their family. The court's role is merely one of determining what those obligations were. Obligations should not end when it becomes undesirable or inconvenient to acknowledge them.

Perhaps the point being missed is that the man is already "poorer" than he would like to think, because of those obligations to a previous family which he would now rather deny or minimize. They must be attachments to his income so long as, and to whatever degree, they would have been had the new relationship not taken place. These obligations are, or should be, considered inviolable.

Should the second marriage also break down, any impairment caused or child support obligations undertaken would be a further inviolable responsibility of the man's - but only to the extent they may be considered with regard to his unattached income, i.e. his first and undiminished obligation lies with his first wife and children. Prior commitments must not be set aside.

As a man forms succeeding unions they must be on the basis of diminished financial ability. At whatever point he finds himself unable to make any more commitments due to his income already being attached to the tolerable limit, that is the point at which he must stop taking on new responsibilities. This is not to say he must not form any new unions. This is merely to acknowledge the inviolability of his previous obligations which he has incurred by bringing life into the world and/or by allowing the earning capacity of another to become impaired.

Recommendation:

The Act should specify that previous commitments take precedence over subsequent ones. When a judge is considering an appropriate amount of maintenance for a first family, he should not heed the argument of the husband that he has voluntarily taken on new family responsibilities which diminish his ability to pay.

D. CONCLUSIONS

We cannot abandon women like flotsam and jetsom on the seas of judicial discretion. Homemaking and child care-giving are honourable, responsible, demanding and most necessary labours in any society, certainly of no less value than those in the paid labour force. They must be recognized as such by entrenching these values in clearly defined family maintenance laws.

There must no longer be apathy to the continuance of laws which discriminate against women. Men must begin to share equally in the negative economic consequences of being female in today's society whether these result from unpaid work in the home or underpaid work in the wage sector. Until there is an equal sharing of responsibility in the home and equal opportunity in the paid labour force, there is a transitional gap which must be bridged.

We must as a society be committed to the raising of female children with the expectation that they will be required to achieve financial independence. Conditions necessary to achieve this include decisive action by parents; the removal of sex-role stereotyping in the schools; and the elimination of gender barriers to equality in the labour market. Women can then reasonably be expected to support themselves in the event of separation. Obviously, this is a long term goal and even the most optimistic of those among us would admit that it will require more than one generation.

Meanwhile, women are being raised with the expectation that the husband will be the provider and the wife will be primarily responsible for child care. Hence, girls often have

little or no career aspirations or pragmatic long term career plans. They must not be economically penalized for having planned their lives according to prevailing wisdom.

Present family laws discriminate with regard to women's work in the home in that they fail to provide equitable compensation for her resulting economic impairment. There is an acceptance of female-headed family units living at standards beneath those of the male-headed family units, thus condemning the former to the trauma and ongoing hardships of standards of living unrelated to that experienced in marriage, while carrying the responsibility of ongoing child care. It is inappropriate to expect women to continue to bear the majority of child care and homemaking responsibilities under inequitably reduced financial circumstances.

Motherwork must become parentwork. The true cost of less than equal sharing of those responsibilities must be exacted in family maintenance decisions. A clear declaration of societal expectations regarding responsibilities toward one's family is necessary.

While in many families the financial situation cannot support two households in any but reduced circumstances, this reduction must be equal for both. There is no logical or just reason for the one who has always been the breadwinner to live at a higher standard of living than the one whose income-earning ability has been impaired through meeting expected family responsibilities in the home. It is no reason for the children to be raised in worse conditions than those experienced by the parent who has been working in the paid labour market.

Especially in difficult economic times we must be zealous in our efforts toward equity since no one group has a greater right to subsistence, never mind advantages, than another. The immediate approach recommended will address current disparities which have a major adverse impact on this and the immediate future generations of women.

Long term strategies must encompass the elimination of sex-role stereotyping, the promotion of financial independence as a goal for all women, the acceptance of parental rather than just maternal child care responsibilities, and the removal of systemic barriers affecting women in the paid labour force.

E. RECOMMENDATIONS:

1. Family Maintenance laws must be explicit that where the income earning ability of one spouse has been impaired during the marriage, that spouse must be given time and maintenance in order to achieve "financial independence".

   Therefore we recommend the following legislative change:

   Amend s. 4 of the Act to state that where the income earning ability of one spouse has been impaired during the marriage, that spouse must be given time and maintenance in order to discharge her obligation to become financially independent of the other spouse.

2. A spouse should not be considered to have achieved "financial independence" until she can maintain a similar standard of living for her household to that of her separated spouse.

   Therefore we recommend the following legislative change:

   Define "financially independent" as contained in s. 5(1) (g) of the Act to be achieved only when a spouse can maintain a standard of living similar to that of her estranged spouse.

3. "Income earning capacity" must be considered to have been "impaired" whenever a spouse has taken the primary responsibility for homemaking or parenting in addition to or instead of her work in the paid labour force.

Therefore we recommend the following legislative change:

Define "impairment of income earning capacity and financial status" as contained in s. 5(1) (h) of the Act to have occurred whenever a spouse has taken responsibility for homemaking or parenting in priority to or instead of her work in the paid labour force.

4. Assets accumulated during a marriage and divided equally upon separation should not be considered in maintenance decisions.

Therefore we recommend the following legislative change:

Amend s. 5(1) (f) of the Act to provide that a property settlement is not to be taken into consideration in determining maintenance unless there has not been an equal sharing of assets.

5. The court in determining what is "reasonable" by way of maintenance must assume that both spouses are entitled to enjoy a similar standard of living after separation.

Therefore we recommend the following legislative change:

Amend s. 5(1) (c) of the Act to provide that in determining maintenance the court should consider the standard of living of both family units with a view to ensuring that such standards are similar for both spouses after separation.

6. The Attorney General's Department should develop a system of reporting and collection of relevant data concerning maintenance decisions and (a) distribute same to the judiciary to assist them in their deliberations; and (b) make same available to the public.

   Therefore we recommend that:

   The Attorney General's Department initiate the reporting and collection of relevant data concerning maintenance decisions and:

   (a) distribute same to the judiciary to assist them in their deliberations; and

   (b) make same available to the public.

7. The Act should specify that previous commitments take precedence over subsequent ones. When a judge is considering an appropriate amount of maintenance for a first family, he should not heed the argument of the husband that he has voluntarily taken on new family responsibilities which diminish his ability to pay.

   Therefore we recommend the following legislative change:

   Amend s. 5(1) (d) of the Act to provide that a pre-existing obligation for the support and maintenance of a child or former spouse must be considered and maintained in the event of a subsequent motion to vary by a paying spouse who has taken on new family obligations.

TABLE OF MAINTENANCE DECISIONS, 1983-1984

TABLE KEY

The following table shows a breakdown of 11 maintenance decisions during 1983-1984. Our information is based on the contents of the pockets at the Manitoba Court of Queen's Bench and the judges' written decisions.

Section Titles:

"Number of children" refers to those children at the time of the trial defined, under the applicable Act, as dependent;

"Custody to Mother" refers to the number of such children, residing with the mother;

"Custody to Father" is the counterpart of the latter;

"Her Income Before Maintenance" refers to any ongoing payments she may be receiving whether in form of salary, family allowance, or any source other than from her spouse;

"His Income Before Maintenance" refers likewise to any ongoing payments he may be receiving whether in form of salary, family allowance, or any source other than from his spouse;

"Amount of Maintenance Ordered" refers to the judicial decision relating to the total amount to be transferred from one spouse to another by way of maintenance, (Note: transfers resulting from property division are not considered);

"His/Her Income after Maintenance Paid" refers to total available income for each spouse after maintenance payments have been made;

"Percentage of Combined Income to Her/Him" refers to the total amounts of disclosed income to the family unit receiving it;

"Number of Years Married" refers to the length of time a couple cohabitted until the time of separation.

TABLE OF MAINTENANCE DECISIONS, 1983-1984

Case and Court	Number of Children	Custody to Mother	Custody to Father	Her Income before Maintenance	His Income before Maintenance	Amount of Maintenance Ordered	Her Income after Maintenance Paid	His Income after Maintenance Paid	Percentage of Combined Income to Her	Percentage of Combined Income to Him	Number of Years Married
1. Jensen March 27, 1984 (unreported) Man. Q.B.	3	2	1	$734.00 gross/month or $8,808.00/ year	$6,500.00 gross/month or $78,000.00/ year	$1,770.00/ month or $21,240.00 gross/year	$2,504.00/ month or $30,048.00/ year	$4,730.00/ month or $56,760.00/ year	35% for a unit of three	65% for a unit of two	14
2. Taggart March 23, 1984 (unreported) (Man. Q.B.)	0	0	0	$1,000.00 gross/month or $12,000.00 per year	$2,938.00 gross/month or $35,256.00/ year	$0.00	$1,000.00 gross/month or $12,000.00 per year	$2,938.00 gross/month or $35,256.00 per year	25% for a unit of one	75% for a unit of one	27
3. Ferniuk (1983) 5 W.W.R. 406 (Man. Q.B.)	2	0	0	$1,250.00 gross/month or $15,000.00 per year	$2,716.66 gross/month or $32,600.00/ year	Lump sum of $15,000.00 or $500.00/ month for 30 months	$1,750.00/ month or $21,000.00 per year	$2,216.66/ month or $26,000.00/ year	44% for a unit of one	56% for a unit of two	
4. Guthell (1983) 34 R.F.L. (2d) 50 (Man. Q.B.)	3	0	1	$0.00	$8,093.33 gross/month or $97,000.00/ year, based on a 3 year average	$1,500.00/ month or $18,000.00/ year	$1,400.00/mo or $18,000.00 per year	$6,583.33/ month or $79,000.00/ year	19% for a unit of one	81% for a unit of two	23
5. Isbister (1981) 22 R.F.L. (2d) 234 (Man. C.A.)	2	2	0	$1,000.00 net/month or $12,000/year	$2,278.05 net/ month or $27,336.60/ year	$500.00/month or $6,000.00/ year ($250.00/ month or $3,000.00/year per child)	$1,500.00/ month or $11,040.00/ year	$1,778.00/ month or $21,336.60/ year	46% for a unit of three	54% for a unit of one	10
6. Maruda (1981) 24 R.F.L. (2d) 389 (Man. Q.B.)	4	2	1	$650.00 net/ month or $7,800.00/ year	$1,434.81 gross/month or $17,217.72/ year	$270.00/month or $3,240.00/ year	$920.00/ month or $11,040.00/ year	$1,164.81/ month or $13,977.72/ year	44% for a unit of three	56% for a unit of two	

Case and Court	Number of Children	Custody to Mother	Custody to Father	Her Income before Maintenance	His Income before Maintenance	Amount of Maintenance Ordered	Her Income after Maintenance Paid	His Income after Maintenance Paid	Percentage of Combined Income to Her	Percentage of Combined Income to Him	Number of Years Married
7. Ball (1982) 27 R.F.L. (2d) 246 (Man. Q.B.)	2	2	0	$1,309.00 net/month approx. including family allowance or $15,718.80/ year	$1,700.00 net/month or approx. $20,400.00/ year	$100.00 gross/month or $1,200.00/ year	$1,409.00/ month approx. or $16,918.80 per year	$1,600.00/ month approx. or $19,200.00 per year	47% for a unit of three	53% for a unit of one	8
8. Leb May 22, 1984 (Unreported) (Man. Q.B.)	2	2	0	$57.00 gross/ month or $684.00/year	$16,117.17 gross/month or $193,406.00/ year	$2,800.00/ month tax free $33,600.00/year tax free	$2,857.00/ month or $34,284.00/ year	$13,317.17/ month or $159,806.00/ year	18% for a unit of three	82% for a unit of one	19
9. Burdeyny April 30, 1984 (Unreported) (Man. Q.B.)	0	0	0	$808.82 gross/month including pension or $9,705.84/ year	$2,798.82 gross/month including pension or $33,585.84/ year	$350.00/month or $4,200.00/ year	$1,158.82/ month or $13,905.84/ year	$2,448.82/ month or $29,385.84/ year	32% for a unit of one	68% for a unit of one	35
10. Friesen May 11, 1984 (Unreported) (Man. Q.B.)	3	0	3	$1,000.00 gross/month or $12,000.00 per year	$3,476.67 gross/month or $41,718.84/ year	$0.00	$1,000.00/ month or $12,000.00/ year	$3,476.67/ month or $41,718.84/ year	22% for a unit of one	78% for a unit of four	20
11. Murray May 31, 1984 (Unreported) (Man. Q.B.)	1	1	0	no income	$35,000/year gross	$900/month	$10,800/year	$24,200/year	31% for a unit of two	69% for a unit of one	18

FOOTNOTES

1 This group was composed at the time of Ruth Browne, Jean Carson, Georgia Cordes, Beverly Goodwin, Berenice Sisler and Alice Steinbart.

2 The present group is composed of: Georgia Cordes, Mona Brown, Berenice Sisler, Judy Holden, Elizabeth MacEwan, Carolyn Garlick, Maureen Bracken, Joan Turner and Bev Goodwin.

3 Sponsored by the Manitoba Student Temporary Employment Program.

4 Eichler, Margrit, Families in Canada Today: Recent Changes and Their Policy Consequences, Gage Publishing Limited, Toronto, 1983; page 26.

5 Ibid, page 212 - 213.

6 Ibid, page 330; and Women and Poverty, Canadian Advisory Council on the Status of Women, February 1985.

7A One-Parent Family: ACSW Principles & Recommendations, Advisory Council on the Status of Women, January 1977; page 1.

7B Presentation to the Standing Committee on Justice and Legal Affairs, Canadian Advisory Council on the Status of Women, June 19, 1985.

8 Eichler, Margrit, Status of Women News 1980.

9 Turner, Joan and Lois Emery (eds.), Perspectives on Women in the 1980s, The University of Manitoba Press, Winnipeg, 1983; page 153.

10 Armstrong, Pat and Hugh Armstrong, The Double Ghetto, McClelland and Stewart, Toronto, 1984; page 18.

11 The Family Maintenance Act S.M. 1978, C.25, S.5.(i)(i).

12 Taggart v. Taggart (March 23, 1984) Man. Q.B.; unreported.

13 The Family Maintenance Act, S.5(i)(f).

14 Supra note 13.

15 Isbister v. Isbister (1981) 22 R.F.L. (2d) 234.

16 Gutheil v. Gutheil (1983) 34 R.F.L. (2d) 50.

17 Ibid; page 62.

18 A Brief Concerning Bill C-10: An Act to Amend the Divorce Act, Canadian Advisory Council on the Status of Women, May 1984; page 7.

19 Sections 2(1) and 5(1).

20 Leb v. Leb, (May 22, 1984), Man. Q.B., unreported.

21 Isbister v. Isbister, (1981) 22 R.F.L. (2d) 234 (Man. C.A.).

22 Supra note 13.

23 Murray v. Murray (May 31, 1984) Man. Q.B., unreported.

24 Supra note 17.

25 Jensen v. Jensen (March 27, 1984) Man. Q.B., unreported.

26 Friesen v. Friesen (May 11, 1984) Man. Q.B., unreported.

27 The Family Maintenance Act, sections 12(1) and (2).

28 Neffgen v. Neffgen (1983) 35 R.F.L. (2d) 393 (Man. Q.B.).

29 Ball v. Ball (1982) 27 R.F.L. (2d) 246.

30 Ibid; page 248.

31 Turner v. Turner (1972) 8 R.F.L. 15 (Man. Q.B.).

32 McQuilkin v. Dawson (1976) 62 D.L.R. (3d) 381 and 382.

33 Jamieson v. Jamieson (1980) 22 B.C.L.R. 11 (BCSC).

34 Kinghorn v. Kinghorn and Michel (1960) 34 W.W.R. 123 and 125 (Sask Q.B.).

35 Weisman, Norris, The Second Family in the Law of Support, The Carswell Company Limited, Toronto, 1984; page 245 - 269.

36 Supra note 34; page 383.

APPENDIX "A"

MONITORING THE FAMILY MAINTENANCE ACT: ANALYSIS AND RECOMMENDATIONS

A BRIEF

SUBMITTED TO

ATTORNEY-GENERAL GERALD MERCIER

PROVINCE OF MANITOBA

BY

RUTH BROWNE

JEAN CARSON

GEORGIA CORDES

BEVERLY GOODWIN

BERENICE SISLER

ALICE STEINBART

SEPTEMBER 1981

WINNIPEG, MANITOBA

INTRODUCTION

> 'There is no other factor explaining more income disparity today than sex - everything else pales beside it in significance. While other variables - education, race, region, ethnicity, language, etc. - affect income, within each of these groups sex retains its importance in explaining income variance.' Within each of these variable groupings women are at the bottom economically.

So writes economic researcher Margrit Eichler in her article "Family Income - A Critical Look at the Concept" in the Spring 1980 volume of Status of Women News published by the National Action Committee on the Status of Women. The responsibility lies within all sectors of our society to comprehend this inequity and to respond.

One of the contributing factors to the inferior economic status of women has been that of the institution of marriage. Its socially prescribed non-paid roles, along with their legal reinforcement, continue to this day to act as a disadvantage for women despite slow social and legal change.

Recent family law reform in Canada, progressive as it may be, does not fully address itself to and/or fully respond to the introductory challenge of the inferior economic position of women. Despite recent reform of Manitoba's Family Maintenance Act, a review of 23 documented maintenance awards granted in the past three years indicate a continuation of a lower economic status for women and children in their care than for husbands and fathers. The task remains for us all to continually evaluate and improve laws and legal treatment to alter that position.

REVIEW

The Family Maintenance Act of Manitoba specifies that spouses are equally responsible for the total mutual support system which sustains a marriage and family relationship. The varied contributions of each spouse are acknowledged to be equally valuable and vital to the establishment of a quality and standard of living for each married couple.

At the time of marriage breakdown, the Family Maintenance Act details further maintenance responsibilities and rights for various family members

after separation. With respect to the children of such a relationship, each parent has an obligation to equally share in maintaining an adequate system for their support and nurture. This applies to all children under the age of 18 regardless of parental custody or visiting rights.

In addition, the Act deems these equal parental responsibilities extremely vital; so much so that they should not be altered as a result of the present or future marital status of either of the parents. In other words, the separated parents' responsibility to their children is theoretically considered to be the relationship of first and highest priority in the eyes of the law.

The amount of maintenance for children is derived from consideration of a variety of living expenses necessary to provide for their adequate and stable quality of life. The financial and social resources of both parents are obviously an important factor as well.

When families separate, the Family Maintenance Act spells out a differing direction of legal obligation with respect to the spouses. It assumes that, because of their adult status and desire to sever their married relationship, spouses should first evaluate and implement their personal abilities to become financially independent of each other.

When such independence is not possible, immediately or otherwise, court application for spousal maintenance can be made by the former spouse who cannot become self-supporting. At the time of such application to the court, different factors than for children are considered for marriage partners. They are:

1. the financial needs of the applicant
2. the ability to pay of the self-supporting spouse
3. the standard of living of each spouse
4. property settlements
5. any obligation to provide support for others.

By way of review, the factors considered in the case of maintenance for children are:

1. the cost of housing
2. cost of living for children including housekeeping, food, clothing, recreation and supervision
3. the need for and cost of providing a stable environment
4. the financial circumstances of the parents.

ANALYSIS OF THE FAMILY MAINTENANCE ACT

The principle of maintenance for children appears to be their provision, equally shared by both parents, for an adequate, nurturing family life.

The principle behind spousal maintenance appears to be much less reflective of the equality of contribution in a family relationship, during and after a marriage, of the financially dependent spouse, when compared to the centrality of the role of children in a marriage relationship, as reflected in children's maintenance. The dependent role of children both during and after a marriage appears to have priority in the Family Maintenance Act over the role of the financially dependent parent/spouse during those times.

When analyzing the Act's criteria for determining maintenance for family members, the needs of the children and their related costs are specific and paramount. The financial circumstances of the parents, of course, will provide the degree of reality for meeting those needs. The degree to which a cost analysis referred to in the criteria is actually undertaken and documented in maintenance decisions is unclear.

Analysis of criteria for spousal maintenance finds far less specification of the needs of and costs required for a dependent spouse. The ability of a self-supporting spouse to pay maintenance to a dependent spouse does not equal the strong direction and tone requiring equal obligations of parents to maintain their children after marriage. In the spousal maintenance consideration, "ability to pay" is but one of the criteria to be considered. In the children's maintenance consideration, "equal obligation to support" is a basic principle - a responsibility not to be eliminated even in circumstances where parents assume new marital obligations. In the consideration for spousal maintenance, new increased family obligations are one of the criteria which can, and usually alter/decrease the amount of maintenance for dependent spouses. Unfortunately in these circumstances, many court awards are decreased for children as well, pointing out that judicial discretion is indeed altering equality of parental responsibility as legislated. Not only are more separated mothers carrying the major share of responsibility for physical and emotional nurturing of children, as well as being expected to meet half or more of their financial needs, they are also often expected to carry an even greater share of

responsibility for the financial security of their children when court awards are decreased.

ANALYSIS OF COURT DECISIONS

Twenty-three court decisions relating to separations and divorces have been analyzed. Nineteen of these cases revealed that the former-husband/father was generally granted a significantly larger proportion of the "after maintenance" income total of the two family units when compared to the former-wife/mother. Five areas highlight this inequity:

1. Seven cases found mothers with custody of one child receiving an average of 49 per cent (ranging from a low of 24 per cent to a high of 76 per cent) less "after maintenance" income than the fathers who were living alone.

2. Three cases found mothers with custody of two children receiving an average of 39 per cent (ranging from a low of two per cent to a high of 66 per cent) less "after maintenance" income than the fathers who were living alone.

3. Three cases found mothers with custody of three children receiving an average of 39 per cent (ranging from a low of 16 per cent to a high of 62 per cent) less "after maintenance" income than the fathers who were living alone.

4. Two cases (Pizyckyj V. Pizyckyj and Vince V. Vince) found fathers with custody of two and three children respectively receiving 30 per cent and 56 per cent more "after maintenance" income than the mothers who were living alone.

5. Two cases found fathers with custody of one child each respectively receiving six per cent and 22 per cent more "after maintenance" income than the mothers who also had custody of one child each.

Only two of 23 cases found division of income totals which would most closely approximate an equitable financial distribution between family units.

RECOMMENDATIONS

After analysis of all of the considerations for maintenance awards for family members within the Family

Maintenance Act, as well as analysis of the resulting court judgments, the following recommendations are made:

1. That the criteria for determining the amount of maintenance for children and for spouses in need be similar in intent, even though the reasons for their inception may differ because of age, abilities, roles and contributions to the family.

2. That realistic needs and cost of living be equally reflected in criteria for spousal as well as child maintenance.

3. That such geographical, sex, and age-related financial data be provided as a requirement in the judicial process as part of the consideration of maintenance for each man, woman, girl or boy. Judges must use this data as a basis for consideration, and such should be documented in each case.

4. That the court require full standardized, documented disclosure of the financial circumstances of each spouse prior to maintenance award decisions. Standardized forms similar to those used by the federal government for tax purposes, and/or by banks for loan purposes should be devised to provide adequate financial data free of financial loopholes often used to personal advantage during court proceedings.

   It was recently reported in the press that the Manitoba Court of Appeal judges, hearing the Bobby Hull - Joanne Hull case regarding divorce settlement, "were critical of the financial information they had received, saying they did not have details on which to base a decision."

   "...Judge Monnin said that after hearing 1 1/2 days of argument from both sides, he still doesn't know what Hull owns, unless he accepts what Hull says he owns and "I am suspicious as heck."

   "(Hull's lawyer) said Hull's accountant looked after his investments, many which had been made years ago. He said it was difficult for him to keep track."

   Similar points are brought to light in the following cases: Fortin V. Fortin, Gareau V. Gareau, Smith V. Smith, Tycholiz V. Tycholiz.

The Institute of Law Research and Reform, University of Alberta, noted in its March 1981 summary report Matrimonial Support Failures: Reasons, Profiles and Perceptions of Individuals Involved:

A. "There was a great amount of missing information in Supreme Court files. This information included: incomes of each spouse, employment status, assets and debts and whether or not a spouse was on Social Assistance. It seems unlikely that the courts received sufficient validated evidence to review the fairness and appropriateness of the minutes of settlement.

B. "Information relating to income, assets, debts, and employment was recorded very rarely in the files of all four family courts visited."

These concerns of judges and researchers highlight the need for full and complete financial disclosure. Less than honest and/or adequate disclosure in the past most often creates a disadvantageous situation for the financially dependent spouse, usually the wife.

5. That expected tax implications due from maintenance recipients be considered and incorporated into decisions when awards are made.

6. That penalties for incomplete court disclosure in maintenance proceedings be similar to those for inadequate tax or census disclosure.

7. That the enforcement procedure relating to such penalties be adequate and strong.

8. That the legal acknowledgment of equality of spousal contribution during marriage, the equal parental contribution towards child support, and the "Standard of Living" criteria in awarding spousal maintenance all be reflected in future maintenance awards. This would attempt to create more equal standards of living for both spouses, rather than creating inequitable standards of living for spouses, as appears to be the trend at present. Otherwise, non-self-supporting spouses will continue to be financially penalized largely

as a result of their non-paid contribution during the marriage. (See Jones V. Jones)

9. That maintenance awards not be based on or varied according to future marital and thereby related financial obligations of either spouse. One's first family and its members should legally take precedence over future new family obligations.

10. That maintenance payment responsibilities should legally take precedence over other financial responsibilities to creditors. Thompson V. Thompson and Fortin V. Fortin are only two examples of prevalent judicial reasoning which extends a greater concern to creditors than to family obligations.

11. That maintenance awards not be dependent on/resultant from outstanding debts for purchases of a luxury nature unnecessary for maintenance of an adequate standard of living. Repossession or sale of such items (i.e. recreational vehicles, expensive personal and household accessories, private club memberships) is preferable to inadequate and/or inequitable maintenance awards.

12. That maintenance awards be reviewed on a regular basis to take into account increasing ages of children and inflation, in addition to the outlined criteria for consideration in the legislation.

CONCLUSION

The Social Planning Council of Winnipeg has stated that single parent families (the majority of which are female-headed) are the hardest pressed of all family units. In 1979 the Social Planning Council of Metropolitan Toronto stated that a single mother in Toronto needed an income of more than $16,000 per year to adequately support two children. The United States Population Reference Bureau recently estimated that it costs an average of $3,220-$3,610 per year per child to raise a family, in terms of 1980 cost of living. We have a considerable task before us to respond to the inequalities dealt to women who head single parent families, as highlighted in this brief. We trust that all sectors can meet this challenge.

AD HOC FAMILY LAW MONITORING GROUP REPORT
TABLE OF MAINTENANCE DECISIONS
1981

Case and Court	Number of Children	Custody to Mother	Custody to Father	Her Income before Maintenance	His Income before Maintenance	Amount of Maintenance Ordered	Her Income after Maintenance Paid	His Income after Maintenance Paid	Percentage of Combined Income to Her	Percentage of Combined Income To Him
1. Smith v. Smith County Court of Brandon	4	4	-	$744.42 net per month or $8,933.00 per year	$867.50 net per month or $10,410.00 per year	$120.00 per month or $1,440 per year	$864.42 per month or $10,373.00 per year	$747.50 per month or $8,970.00 per year	54% for unit of five	46% for unit of one
2. Parry v. Parry Court of Appeal Brandon	1	1	-	-	$1,950.00 per month or $23,400.00 per year	$500.00 per month or $6,000 per year	$500.00 per month or $6,000.00 per year	$1,450 per month or $17,400.00 per year	26% for unit of two	74% for unit of one
3. Wittmeier v. Wittmeier Provincial Judges' Court	1	1	-	"almost non-existent"	$2,333.33 per month or $28,000.00 per year	$750.00 per month or $9,000 per year	$750.00 per month or $9,000 per year	$1,583.33 per month or $19,000.00 per year	32% for unit of two	68% for unit of one
4. Boch v. Boch County Court of Winnipeg	2	2	-	"sporadic seasonal employment"	$2,083.33 per month or $25,000.00 per year	$550.00 per month or $6,600 per year	$550.00 per month plus "sporadic seasonal employment" or $6,600 per year	$1,533.33 per month or $18,400.00 per year	26% for unit of three	74% for unit of one
5. Tycholiz v. Tycholiz County Court of Winnipeg	1	1	-	$1,850.00 per month or $22,200 per year	$1,560.00 per month + undisclosed overtime or $18,720.00 per year	$200.00 per month or $2,400 per year	$2,050.00 per month or $24,600.00 per year	$1,360.00 per month plus undisclosed overtime or $16,320.00 per year	60% for unit of two	40% for unit of one
6. Jones v. Jones Queen's Bench	1	1	-	$900.00 per month or $10,800.00 per year	$1,950.00 per month or $23,400.00 per year	$188.00 per month or $2,256 per year	$1,088.00 per month or $13,056.00 per year	$1,762.00 per month or $21,144.00 per year	38% for unit of two	62% for unit of one

Case and Court	Number of Children	Custody to Mother	Custody to Father	Her Income before Maintenance	His Income before Maintenance	Amount of Maintenance Ordered	Her Income after Maintenance Paid	His Income after Maintenance Paid	Percentage of Combined Income to Her	Percentage of Combined Income To Him
7. Pizyckyj v. Pizyckyj Court of Appeal	2	-	2	$813.33 per month or $9,760.00 per year	$1,833.33 per month or $22,000.00 per year	$100.00 per month or $1,200.00 per year	$913.33 per month or $10,960.00 per year	$1,733.33 per month or $20,800.00 per year	35% for unit of one	65% for unit of three
8. Vince v. Vince Court of Appeal	3	-	3	$380.90 per month or $4,570.80 per year	$1,112.97 per month or $13,355.64 per year	$50.00 per month or $600.00 per year	$330.90 per month or $3,970.80 per year	$1,162.97 per month or $13,955.64 per year	22% for unit of one	78% for unit of four
9. Diswinka v. Diswinka Brandon Family Ct.	2	2	-	$117.00 per month or $1,404.00 per year	$2,083.33 per month or $25,000.00 per year	$500.00 for the first six months and $375.00 thereafter plus mortgage, taxes, insurance, and lump sum of $1,000.00	$617.00 for the first six months and $492.00 thereafter plus mortgage taxes, insurance, and lump sum	$1,583.33 for the first six months and $1,708.33 thereafter, less mortgage, taxes, insurance, and lump sum	23% for unit of three for first six months and 17% thereafter	77% for unit of one for first six months and 83% thereafter
10. Tucker v. Tucker Queen's Bench	3	3	-	"unemployed"	$1,103.00 per month or $13,236.00 per year	$1,000.00 per month or $12,000 per year	$1,000.00 per month or $12,000.00 per year	$103.00 per month or $1,236.00 per year	91% for unit of four	9% for unit of one
11. S.D. v. L.D. Provincial Judges' Court	1	1	-	$345.00 per month or $4,140.00 per year	$3,416.67 per month or $41,000.00 per year	$600.00 per month or $7,200 per year	$945.00 per month or $11,340.00 per year	$2,816.67 per month or $33,800.00 per year	25% for unit of two	75% for unit of one
12. Thompson v. Thompson County Court of Winnipeg	3	3	-	$863.00 net per month or $10,356.00 per year	$600.00 net per month or $7,200.00 per year	$100.00 per month or $1,200 per year	$963.00 per month or $11,556.00 per year	$500.00 per month or $6,000.00 per year	66% for unit of four	34% for unit of one

Case and Court	Number of Children	Custody to Mother	Custody to Father	Her Income before Maintenance	His Income before Maintenance	Amount of Maintenance Ordered	Her Income after Maintenance Paid	His Income after Maintenance Paid	Percentage of Combined Income to Her	Percentage of Combined Income To Him
13. Wong v. Graham Provincial Judges' Court	1	1	-	"minimal earnings"	$1,300.00 per month or $15,600.00 per year	$150.00 per month or $1,800 per year	$150.00 per month plus "minimal earnings" or $1,800.00 per year	$1,150.00 per month or $13,800.00 per year	12% for unit of two	88% for unit of one
14. Fortin v. Fortin County Court	1	1	-	-	$2,000.00 per month or $24,000.00 per year	$795.00 for one month and $450 thereafter or $5,400.00 per year	$795.00 for one month and $450.00 thereafter, or $5,400.00 per year	$1,205.00 for one month and $1,550.00 thereafter, or $18,600.00 per year	23% for unit of two	77% for unit of one
15. Dillon v. Dillon Provincial Judges' Court	3	3	-	$510.00 per month or $6,120.00 per year	$1,200.00 net per month or $14,400.00 per year	$420.00 per month or $5,040 per year	$930.00 per month or $11,160.00 per year	$780.00 per month or $9,360.00 per year	54% for unit of four	46% for unit of one
16. Turner v. Turner Court of Appeal	1	1	-	$1,000.00 net per month or $12,000.00 per year	$5,333.33 per month or $64,000.00 per year	$500.00 per month or $6,000.00 per year	$1,500.00 per month or $1,800.00 per year	$4,833.33 per month or $58,000.00 per year	23% for unit of two	77% for unit of one
17. Levin v. Levin Queen's Bench	2	1	1	$782.00 net per month or $9,384.00 per year	$2,500.00 per month or $30,000.00 per year	$500.00 per month or $6,000 per year (Judge specifically states both children are entitled to same standard of living).	$1,282.00 per month or $15,384 per year	$2,000.00 per month or $24,000.00 per year	39% for unit of two	61% for unit of two

Case and Court	Number of Children	Custody to Mother	Custody to Father	Her Income before Maintenance	His Income before Maintenance	Amount of Maintenance Ordered	Her Income after Maintenance Paid	His Income after Maintenance Paid	Percentage of Combined Income to Her	Percentage of Combined Income To Him
18. D. v. D. Court of Appeal	-	-	-	$2,208.33 per month or $26,500.00 per year	$3,750.00 per month or $45,000.00 per year	$500.00 per month or $6,000.00 per year	$2,708.83 per month or $32,506.00 per year	$3,250.00 per month or $39,000.00 per year	45% for unit of one	55% for unit of one
19. Hull v. Hull Queen's Bench	3	3	-	-	$20,833.33 per month or $250,000.00 per year	$4,000.00 per month or $48,000.00 per year	$4,000.00 per month or $48,000.00 per year	$16,833.33 per month or $202,000.00 per year	19% for unit of four	81% for unit of one
20. Gareau v. Gareau Queen's Bench	3	3	-	$833.33 per month or $10,000.00 per year	$3,166.66 to $4,000.00 per month or $38,000.00 to $48,000.00 per year	$1,000.00 per month or $12,000.00 per year	$1,833.33 per month or $22,000.00 per year	$2,166.66 to $3,000.00 per month or $26,000.00 to $36,000.00 per year	38% to 46% for unit of four	54% to 62% for unit of one
21. D'Arcy v. D'Arcy Queen's Bench	2	1	1	$1,416.66 per month or $17,000.00 per year	$1,862.00 per month or $22,344.00 per year	$125.00 per month or $1,500 per year	$1,541.00 per month or $18,492.00 per year	$1,737.00 per month or $20,844.00 per year	47% for unit of two	53% for unit of two
22. Gohl v. Gohl Queen's Bench	2	2	-	$702.00 per month or $8,424.00 per year	$1,634.00 per month or $19,608.00 per year	$450.00 per month or $5,400 per year	$1,152.00 per month or $13,824.00 per year	$1,184.00 per month or $14,208.00 per year	49% for unit of three	51% for unit of one
23. MacPherson v. MacPherson Queen's Bench	3	3	-	$100.00 per month or $1,200.00 per year	$5,000.00 per month or $60,000.00 per year	$1,500.00 per month or $18,000.00 per year	$1,600.00 per month or $19,200.00 per year	$3,500.00 per month or $42,000.00 per year	31% for unit of four	69% for unit of one

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APPENDIX "B"

FAMILY MAINTENANCE ACT

(Portions addressed herein)

CHAPTER F20

THE FAMILY MAINTENANCE ACT

(Assented to July 20, 1978)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions.

1 In this Act,

(a) "child" includes a child to whom a person stands in loco parentis;

(b) "court" means the Court of Queen's Bench or the Provincial Court;.

En. S.M. 1984, c. 10, s. 1.

(b.1) "custody" means the care and control of a child by a parent of that child;

En. S.M. 1982-83-84, c. 54, s. 1.

(b.2) "deputy registrar" means a deputy registrar of the Court of Queen's Bench;

En. S.M. 1984, c. 10, s. 2.

(b.3) "judge" means a judge of the court;

En. S.M. 1984, c. 10, s. 2.

(b.4) "master" means a master or referee of the Court of Queen's Bench;

En. S.M. 1984, c. 10, s. 2.

(c) "parent" means a biological parent or adoptive parent of a child and includes a person declared to be the parent of a child under Part II;

En. S.M. 1982-83-84, c. 54, s. 2.

(d) "spouse" where used in relation to another spouse means the person who is married to that spouse, and "spouses" means two persons who are married to each other.

S.M. 1978, c. 25, s. 1.

Am. S.M. 1982-83-84, c. 54, ss. 1 & 2; S.M. 1984, c. 10, ss. 1 & 2.

Best interests test applies.

1.1 In all proceedings under this Act the best interests of the child shall be the paramount consideration of the court.

En. S.M. 1982-83-84, c. 54, s. 3.

Child's views to be considered.

1.2 Where the court is satisfied that a child is able to understand the nature of the proceedings and the court considers that it would not be harmful to the child, the court may consider the views and preferences of the child.

En. S.M. 1982-83-84, c. 54, s 3.

Court may direct investigation.

1.3(1) In a proceeding under this Act, the court may direct an investigation into any matter by a person who

(a) has had no previous connection with the parties to the proceeding or to whom each party consents; and

(b) is a family investigator, social worker or other person approved by the court for the purpose.

En. S.M. 1982-83-84, c. 54, s. 3.

Investigation only to determine best interests.

1.3(2) A court may direct an investigation under subsection (1) only if satisfied that it is necessary in order to determine the best interests of the child.

En. S.M. 1982-83-84, c. 54, s. 3.

Refusal to co-operate.

1.3(3) Where a court directs an investigation pursuant to subsection (1) and a party refuses to co-operate with the investigator, the investigator shall so report to the court which may draw any inference therefrom it considers appropriate.

En. S.M. 1982-83-84, c. 54, s. 3.

PART I

SPOUSES

Mutual support obligation.

2(1) Spouses have the mutual obligation to contribute reasonably to each other's support and maintenance.

Conduct.

2(2) The obligation under subsection (1) exists without regard to the conduct of either spouse and in determining whether to make an order under this Act for support and maintenance of a spouse a court shall not consider the conduct of the spouses in respect of the marriage relationship.

Am. S.M. 1982-83-84, c. 54, s. 4.

Obligation where cohabit for 5 years.

2(3) The obligation under subsection (1) also exists where a man and a woman, not being married to each other, have cohabited continuously for a period of not less than 5 years in a relationship in which one person has been substantially dependent upon the other for support, if an application under this Act is made while they are cohabiting or within 1 year after they cease cohabiting and section 8 applies with the necessary changes to that application.

En. S.M. 1982-83-84, c. 54, s. 5.

No application where spouses agree.

2(4) No application shall be made under subsection (3) where the man and woman have, in writing, made an agreement with respect to maintenance including an agreement to waive maintenance.

En. S.M. 1982-83-84, c. 54, s. 5.

S.M. 1978, c. 25, s. 2; Am. S.M. 1982-83-84, c. 54, ss. 4 & 5.

Personal expenses.

3 The right of a spouse to support and maintenance within the meaning of section 2 includes the right, while living with the other spouse, to periodic reasonable amounts for clothing and other personal expenses and the right to sole discretion free of all interference from the other spouse in the use of those amounts.

S.M. 1978, c. 25, s. 3.

Onus of self-support after separation.

4 Notwithstanding section 2, a spouse has the obligation after separation to take all reasonable steps to become financially independent of the other spouse.

S.M. 1978, c. 25, s. 4.

Factors affecting order.

5(1) In determining whether to make an order under this Part or section 21 and what provisions the order should contain and, in particular, in determining what is reasonable under sections 2, 3 and 4 for the purposes of the order, a court shall consider all the circumstances of the spouses including the following:

(a) The financial needs of each spouse.

(b) The financial means, earnings and earning capacity of each spouse.

(c) The standard of living of the spouses.

(d) Any obligation of a spouse for the support and maintenance of a child or a person other than the other spouse.

(e) Any contribution of a spouse within the meaning of subsection (2).

(f) The amount of any property settlement made between the spouses.

(g) Where one spouse is financially dependent upon the other spouse, the measures available for the dependent spouse to become financially independent of the other spouse, and the length of time and cost involved in taking those measures.

(h) Any impairment of the income earning capacity and financial status of either spouse resulting from the marriage.

(i) Where one spouse is financially dependent upon the other spouse, whether and to what extent the dependent spouse is complying with the requirements of section 4.

(j) The length of time that the marriage has subsisted.

Domestic service as financial contribution.

5(2) Any housekeeping, child care or other domestic service performed by a spouse for the family is a contribution to support and maintenance within the meaning of section 2 in the same way as if the spouse were devoting the time spent in performing that service in gainful employment and were contributing the earnings therefrom to support and maintenance.

S.M. 1978, c. 25, s. 5.

Financial information.

6(1) Spouses have the mutual obligation to provide each other upon request with information and accountings respecting the financial affairs of the marriage and the domestic establishment relating thereto and, without restricting the generality of the foregoing, with

(a) copies of each other's income tax returns, together with assessment notices;

(b) itemized statements of each other's gross and net earnings, showing all deductions; and

(c) itemized statements of each other's debts and liabilities, if any.

Am. S.M. 1982-83-84, c. 54, s. 6.

Penalty for non disclosure.

6(2) Where a spouse fails to comply with subsection (1), a court on application by the other spouse, may, in addition to or in substitution for any other penalty to which the non-complying spouse is liable under this Act, order that spouse to pay to the applicant an amount not exceeding $5,000.

En. S.M. 1982-83-84, c. 54, s. 6.

S.M. 1978, c. 25, s. 6; Am. S.M. 1982-83-84, c. 54, s. 6.

Application for order.

7(1) A spouse, or any person on behalf of a spouse, may apply to a court for an order under this Part where the other spouse is in breach of an obligation under the Part, or where the applicant spouse desires an order for separation or an order for custody of or access to any child of the marriage or where the applicant spouse desires an order fixing the amount of maintenance payable to the respondent.

Am. S.M. 1982-83-84, c. 54, s. 7.

Effect of separation agreement.

7(2) Where two spouses have separated by mutual agreement, and one of them has agreed in writing to release the other from liability for support and maintenance or to accept from the other specified periodic amounts for support and maintenance, no order shall be made under this Act for the support and maintenance of the spouse who has so agreed.

Restricted application of subsec. (2).

7(3) Subsection (2) does not apply in the case of a separation agreement

(a) where the spouse who is required by the agreement to provide support and maintenance is in default thereunder; or

(b) where the support and maintenance that a spouse agreed therein to provide was inadequate having regard to the circumstances of both spouses at the date of the agreement; or

(c) where the spouse who in the agreement released the other from liability for support and maintenance or agreed to accept from the other specified periodic amounts for support and maintenance has become a public charge or a person in need of public assistance.

Dum casta clauses inoperative.

7(4) Where an agreement provides that support for a spouse shall only continue while the spouse is chaste that provision is invalid and unenforceable and all other provisions of the agreement shall be enforced without regard to that provision.

En. S.M. 1982-83-84, c. 54, s. 8.
S.M. 1978, c. 25, s. 7; Am. S.M. 1982-83-84, c. 54, ss. 7 & 8.

Order.

8(1) Upon an application under this Part, a court may make an order containing any one or more of the following provisions and may make any provision in the order subject to such terms and conditions as the court deems proper:

(a) That one spouse pay to the other spouse, or to a 3rd person on behalf of the other spouse, such lump sum or periodic sums or both for support and maintenance or for clothing and other personal expenses as the court may determine.

(b) That the spouses be no longer bound to cohabit with one another.

(c) That one spouse shall not enter upon any premises where the other spouse is living separate and apart.

(d) That one spouse shall not molest, annoy or harass the other spouse or any child in the custody of the other spouse.

(e) Repealed. S.M. 1982-83-84, c. 54, s. 10.

(f) Repealed. S.M. 1982-83-84, c. 54, s. 10.

(g) That court costs and reasonable solicitor's costs, in such amounts as the court may determine, be paid by one spouse, or by both spouses in such proportions as the court may determine.

(h) That one spouse, or the employer, partner or principal of one spouse, as the case may be, provide the other spouse with any information, accountings or documents requested under section 6 and, where the Crown is the employer, this clause binds the Crown.

(i) That any information, accountings or documents ordered to be provided under clause (h), and any examination or cross-examination thereon, shall be treated as confidential and shall not form part of the public record of the court.

(j) That the obligation and liability for support continue after the death of the spouse liable to pay and be a debt of his or her estate for such period as is fixed in the order;

(k) That a spouse who has a policy of life insurance as defined in Part V of The Insurance Act designate the other spouse or a child as the beneficiary either irrevocably or for such period as is fixed in the order.

Am. S.M. 1982-83-84, c. 54, ss. 9, 10 & 11.

8(2) Repealed. S.M. 1984, c. 10, s. 3.